

**AMENDMENT NUMBER 1 TO
CONTRACT DIR-SDD-195
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND
D&H DISTRIBUTING COMPANY**

This Amendment Number 1 is affixed to and shall become a part of Contract DIR-SDD-195, executed March 22, 2005 ("Contract") between the State of Texas, acting by and through the Department of Information Resources ("DIR") and D&H Distributing Company ("Vendor"). The Contract is modified as follows:

1. In accordance with Appendix A, Section 2, Term, the term of the Contract is extended through March 22, 2007, or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) optional one-year terms.
2. Appendix A, Subsection 5.C, Invalid Term or Condition is restated in its entirety as follows:
 - 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
 - 2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.
3. Appendix A, Section 6, Product Terms and Conditions, is restated in its entirety as follows:
 - A. Technology Access Clause, As Required By §2157.005, Texas Government Code (Applicable to State Agency Purchases Only)**
 - 1) Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to DIR and each Customer purchasing products under the Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of:
 - (i) providing equivalent access for effective use by both visual and non-visual means, (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use, and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities

Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

2) In accordance with Section 2157.001, Texas Government Code, this Subsection 6.A. remains in full force and effect for any Purchase Order issued under the Contract prior to September 1, 2006. This Subsection 6.A is invalid for any Purchase Order issued under the Contract on or after September 1, 2006.

B. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Vendors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

3) State agencies and institutions of higher education may begin voluntary compliance with this Subsection 6.B prior to September 1, 2006.

C. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.C.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.C.

4. Appendix A, Subsection 11.B.4, DIR Administrative Fee, is amended to add the following paragraph:

c) Vendor shall reference the DIR Contract number on any remittance instruments.

5. Appendix A, Subsection 11.C, Records and Audit, Paragraph 1 is restated in its entirety as follows:

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

6. Appendix A, Subsection 12.A, Indemnification, is restated in its entirety as follows:

1) Acts or Omissions

Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, their officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as requested by DIR.

2) Infringements

a) Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, their officers, agents and employees, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied under the Contract. Vendor agrees to defend against any and all third party claims at Vendor's expense, whether or not such claims become the subject of litigation provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) grants Vendor control over the defense and settlement thereof, and (iii) reasonably cooperates in response to Vendor's requests for assistance. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

b) Vendor shall have no liability if the alleged infringement is caused in whole or part by: (i) use of the product or service in combination with product or services not provided under the Contract, (ii) use of the product or service for a purpose or in a manner for which the product or service was not designed, (iii) any modification made to the product without Vendor's written approval, (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any intellectual property right owned by or licensed to Customer, or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

7. Appendix A, Subsection 12.B, Vendor Certifications, is restated in its entirety as follows:

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) are not ineligible to receive the Contract under §2155.004, Texas Government Code, (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration, and (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

8. Appendix A, Subsection 13.A, Enforcement of Contract and Dispute Resolution, is restated in its entirety as follows:

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

9. Appendix A, Subsection 13.B.1, Termination for Non-Appropriation, is restated in its entirety as follows:

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or

services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers.

10. Appendix A, Subsection 13.B.4, Termination for Cause, Paragraph b, Purchase Order, is restated in its entirety as follows:

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 5.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

11. New Appendix C, Product Price List, dated March 2006, is attached hereto and supercedes the prior Appendix C.
12. All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 1, and then Contract DIR-SDD-195.

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of March 22, 2006.

D&H DISTRIBUTING COMPANY

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: *signature on file*

Authorized By: *signature on file*

Name: Kerri Gallaway

Name: Brian S. Rawson

Title: Sales Supervisor (K-12)

Title: Director of Service Delivery

Date: 4/10/2006

Date: 4/12/06

Legal: CJHK 4/11/06